



March 5, 2018

VIA ELECTRONIC MAIL

FOIA Officer
Department of Veterans Affairs
FOIA SERVICE
810 Vermont Avenue, NW
(005R1C) VACO
Washington, DC 20420
vacofiaservice@va.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the Department of Veterans Affairs (the “Department” or “VA”) FOIA regulations beginning at 38 C.F.R. Chapter 1, Part 1, Democracy Forward Foundation makes this request on behalf of VoteVets Action Fund (“VoteVets”), a 501(c)(4) non-profit organization focusing on ensuring that the voices of America’s veterans are included in matters of public policy.

Background

In July, Secretary of Veterans Affairs David Shulkin took a ten day trip to Europe. Thereafter, an investigation by the Office of Inspector General (“OIG”) “identified a number of serious derelictions concerning the trip,” including that the Secretary’s Chief of Staff made “false representations” to an ethics official and altered an official record, which resulted in the Department improperly paying for the Secretary’s wife to accompany him on the trip; that Secretary Shulkin improperly accepted a gift of Wimbledon tickets; that the Department kept “inadequate documentation to assess the accuracy and appropriateness of the costs of the trip,” and that the Department subsequently made “misleading statements” to the media about the trip.¹

Following the release of the OIG report, several media outlets have published articles and internal emails that suggest Trump administration officials sought to use Secretary Shulkin’s travel and the subsequent investigation as an opportunity to push for a change in leadership at the

¹ <https://www.va.gov/oig/pubs/VAOIG-17-05909-106.pdf>

Department.² According to these reports, these officials sought to do so in order to promote increased privatization of VA services, including its health system.³

For example, the New York Times reports that:

Jake Leinenkugel, the White House senior adviser on veterans affairs, expressed frustration with Dr. Shulkin and listed ways to topple the leadership of his department once key legislation was passed. ... Mr. Leinenkugel ... proposed “solutions” in the email, including using a continuing investigation of the secretary’s travel to remove Dr. Shulkin’s chief of staff, Vivieca Wright Simpson; replacing the deputy secretary, Thomas G. Bowman, with Mr. Leinenkugel; and replacing Dr. Shulkin with a “strong political candidate.” ...

Mr. Leinenkugel’s suggested replacement for Dr. Shulkin would be likely to spark controversy: Michael J. Kussman, a former under secretary who has been associated with Concerned Veterans of America, a group funded largely by the billionaire conservative activists Charles G. Koch and David H. Koch that advocates shifting spending on veterans’ health care to the private sector.⁴

Secretary Shulkin has publicly stated that he believes there are “attempts to undermine the department from within.”⁵ He also claimed that he has been given permission to investigate this “subversion” and to “purge” the Department if necessary.⁶

Records Requested

In an effort to understand and explain to the public whether and how Trump Administration officials attempted to use the controversy regarding Secretary Shulkin’s travel as an opportunity to change leadership at the Department or to promote a privatization agenda, VoteVets makes the following requests for records:

1. All records discussing or revealing communications with Concerned Veterans for America. This search should include, but not be limited to, a search for the Concerned Veterans for America email extension: cv4a.org.

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<https://www.washingtonpost.com/politics/va-chief-fights-for-his-political-future-amid-internal-strife-and-allegations-of-subterfuge/>

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<https://www.military.com/daily-news/2018/02/20/vets-groups-push-save-shulkins-job-bid-against-va-privatization.html>

⁴ <https://www.nytimes.com/2018/02/15/us/veterans-affairs-david-shulkin.html>

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<https://www.militarytimes.com/veterans/2018/02/15/amid-travel-scandal-shulkin-vows-to-root-out-division-within-va-leadership/>

⁶ <https://www.politico.com/story/2018/02/20/shulkin-veterans-agency-purge-417896>

The time period of this request is January 20, 2017 to the present.

2. All communications within the Department or between the Department and the White House related to Secretary Shulkin's July 2017 trip to Europe, the ensuing OIG investigation or associated press coverage, including but not limited to any communications with any of the following terms: Merle Beri; England; London; Denmark; Copenhagen; Wimbledon; Michael J. Kussman; purge; or a reference to travel, trip, wife, OIG, Inspector General, or investigation in close proximity to Secretary or Shulkin.

The time period of this request is July 1, 2017 to the present.

3. Any communications sent by or to Jake Leinenkugel, Camilo Sandoval, John Ulliyot or Darin Selnick that discuss: Secretary Shulkin's tenure as Secretary, any reference to a departure by Secretary Shulkin from that position, Vivieca Wright Simpson's tenure as Chief of Staff, any reference to a departure by Simpson from that position, or privatization or choice with regard to any VA services.

The time period of this request is September 15, 2017 to the date the search is conducted.

4. All records related to the development of talking points and public statements about Secretary Shulkin's July 2017 trip to Europe and the associated OIG report.

The time period of this request is September 15, 2017 to the present.

5. All communications within the Department or between the Department and the White House related to Secretary Shulkin's July 24, 2017 *USA Today* column, "VA health care will not be privatized on our watch."⁷

Please limit the search to the following Department of Veteran Affairs offices: Office of Executive Secretary; Office of Assistant Secretary for Public & Intergovernmental Affairs; and the Office of Accountability & Whistle Blower Protection.

Request for Expedited Processing

The Requesters are entitled to expedited processing of this request because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public about an actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 38 C.F.R. § 1.556(d)(ii). Expedited processing is also required when the subject of the request is a matter of "widespread and exceptional interest in which possible questions about the government's integrity which affect

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public confidence.” 38 C.F.R. § 1.556(d)(iv). Expedited processing is required here by both 38 C.F.R. § 1.556(d)(ii) and (iv).

With regard to subsection (ii), there is a compelling need to inform the public about apparent infighting at the Department of Veteran Affairs and how it impacts policy decisions that affect the health of America’s veterans. The reporting that senior members of the Trump administration are seeking to undermine Secretary Shulkin because he opposes privatizing VA services are serious. The public, and particularly veterans, have a right to know about the dysfunction at the Department and whether it is driven by conservative political appointees and outside groups pushing a pro-privatization and anti-veteran policy agenda. It is essential that they learn this information as soon as possible, in light of pending legislation related to VA privatization, and the ongoing possibility of changes in VA leadership. Moreover, VoteVets Action Fund is dedicated to promoting civic education, and disseminates information to the public as a central part of its mission.⁸

With regard to subsection (iv), media outlets have reported extensively about the OIG investigation, potential changes in VA leadership, and the possibility of the privatization of VA health services, revealing widespread and exceptional interest in these issues.⁹ The appearance that Trump administration officials attempted to use the investigation into Secretary Shulkin’s travel to force a change in VA leadership and promote a privatization agenda affects the public’s confidence in the Department and raises serious questions about whether the the chaos and in-fighting distract from Department’s ability to serve veterans.¹⁰

Will Fischer has provided the certification on behalf of VoteVets Action Fund, required by 38 C.F.R. § 1.556(d)(2), below.

Request for Fee Waiver

VoteVets Action Fund requests a waiver of document search, review, and duplication fees because the disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

The disclosure of requested records is “likely to contribute significantly to public understanding of the operations or activities of the government” because, as discussed above, news accounts underscore the substantial public interest in the records sought through this request. 5 U.S.C. §

⁸ <http://www.modernhealthcare.com/article/20180222/NEWS/180229975>

⁹ <https://www.nytimes.com/2018/02/15/us/veterans-affairs-david-shulkin.html>,
<https://www.washingtonpost.com/politics/va-chief-fights-for-his-political-future-amid-internal-strife-and-allegations-of-subterfuge/>,
<https://www.cnn.com/2018/02/16/politics/david-shulkin-interview-not-resigning/index.html>

¹⁰

<https://www.militarytimes.com/veterans/2018/02/18/who-is-in-charge-at-the-department-of-veterans-affairs/>

552(a)(4)(A)(iii). Given the ongoing and widespread media attention, the records sought will contribute significantly to public understanding of an issue of profound public importance. Moreover, VoteVets Action Fund is a nonprofit organization organized under Internal Revenue Code § 501(c)(4) and is dedicated to promoting policy engagement and civic education. As a nonprofit organization, it does not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Robin Thurston as soon as possible at foia@democracyforward.org or 202-448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Robin F. Thurston

Robin F. Thurston

Democracy Forward Foundation

Counsel for VoteVets Action Fund

I hereby certify that the foregoing explanation for why there is a compelling need for the requested records is true to the best of my knowledge and belief.

Date: March 2, 2018

/s/ Will Fischer

Will Fischer

VoteVets Action Fund